

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK R. AIELLO,

Plaintiff,

v.

JOHN CONNOLLY IV,

Defendants.

CIV-S-05-00094 DFL PAN

MEMORANDUM OF OPINION  
AND ORDER

Frank Aiello, proceeding pro se, moves for reconsideration of the August 5, 2005 dismissal of his bankruptcy appeal for lack of jurisdiction. Aiello does not dispute that his notice of appeal was untimely. Instead, he argues that this court should reconsider its decision because he made a timely motion to extend the time to file a notice of appeal under Bankruptcy Rule 8002(c).

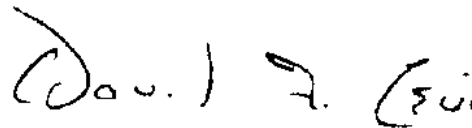
Rule 8002(c) permits the court to grant a motion to extend the time for filing a notice of appeal if: (1) there is a showing of excusable neglect; and (2) the motion is filed within 20 days of the expiration of the time for filing the notice of appeal. The bankruptcy court issued its judgment on November 8, 2004.

1 Rule 8002(a) states that Aiello's time to file the notice of  
2 appeal expired on November 18, 2004. Therefore, he had until  
3 December 8, 2004 to file a motion to extend the time for filing a  
4 notice of appeal. Aiello argues that he filed such a motion on  
5 November 29, 2004, well within the time allowed by Rule 8002(c).

6 The document Aiello filed on November 29, 2004 was not a  
7 motion to extend the time for filing a notice of appeal.  
8 Instead, it was a "Notice of Filing Notice of Appeal." Not only  
9 does this one-page document fail to serve as a motion to extend  
10 the time to file a notice of appeal, but it is completely devoid  
11 of anything that could be construed as "a showing of excusable  
12 neglect." Consequently, it fails to meet either requirement of  
13 Rule 8002(c). Because Aiello failed to follow the procedure when  
14 filing his notice of appeal, this court lacked jurisdiction to  
15 consider the merits of the appeal. See In re Souza, 795 F.2d  
16 855, 857 (9th Cir. 1986). The motion for reconsideration is  
17 DENIED.

18 IT IS SO ORDERED.

19 Dated: 9/23/2005  
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23 DAVID F. LEVI  
24 United States District Judge  
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